

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

UGOCHUKWO GOODLUCK NWAUZOR,  
et al.,  
  
Plaintiffs,  
  
v.  
  
THE GEO GROUP, INC.,  
  
Defendant.

3:17-cv-05769-RJB  
3:17-cv-05806-RJB  
  
Tacoma, Washington  
  
June 16, 2021  
  
Jury Question

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
THE GEO GROUP, INC.,  
  
Defendant.

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE ROBERT J. BRYAN  
UNITED STATES DISTRICT JUDGE

Proceedings stenographically reported and transcribed  
With computer-aided technology

## APPEARANCES

For the Plaintiff  
Nwauzor, et al.:

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The GEO Group:

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MORNING SESSION

JUNE 16, 2021

(The following occurred outside the presence of the jury.)

THE COURT: Okay. Tyler, is everybody here that needs to be?

THE CLERK: I forwarded the question to the attorneys without the headings of who it is from and everything.

THE COURT: Anyway, the jury would like clarification of the meaning of "municipal," is it interchangeable with "federal."

We have two choices of how to do this. One is to give them a supplemental written instruction, and the other is for me to advise them orally. It appears to me an appropriate supplemental instruction, whether given in writing or orally, is as follows: In the instructions, "municipal" means city or town. It does not mean federal.

Comments from counsel about this?

MS. MELL: It would be the position of GEO that there should be no reference "does not mean federal." Take out the participle.

THE COURT: The question included "is it interchangeable with federal." That's the reason I added that.

MR. WHITEHEAD: Your Honor, I'm sorry.

THE COURT: Mr. Whitehead.

1 MS. MELL: I think just to complete GEO's position  
2 would be that absent giving them a further instruction as to  
3 how this -- how their interest in subsection (k) relates to  
4 the discrimination prong of the affirmative defense, it would  
5 be confusing for them because I think it suggests to them  
6 that they are trying to apply black letter law and make a  
7 legal determination as opposed to a factual one.

8 THE COURT: Other comments?

9 MR. WHITEHEAD: Your Honor, I believe it is an  
10 accurate statement of law. We request that a written  
11 supplemental instruction be issued to the jury.

12 MS. CHIEN: We agree a supplemental instruction on  
13 this issue makes sense.

14 THE COURT: Any objection to my proposed instruction,  
15 other than what Ms. Mell has already said?

16 MR. WHITEHEAD: No, Your Honor.

17 THE COURT: I will write it and bring it into the  
18 jury -- into the room, and I read it to them and give it to  
19 them in writing. All right? Okay. We will move as quick as  
20 we can to get this done.

21 MS. CHIEN: Your Honor, can you please repeat what  
22 the instruction would be?

23 THE COURT: "In the instructions, 'municipal' means  
24 city or town. It does not mean 'federal.'"

25 MS. CHIEN: Can we get a clarifying instruction this

1 is not the law, they should be referring to your instruction?

2 MS. MELL: Absolutely not.

3 THE COURT: What now? What are you talking about?

4 Ms. Chien, you were talking about something. I didn't get  
5 it.

6 MS. CHIEN: Sorry. Is there a possibility to get a  
7 clarifying instruction that this is not the law? They should  
8 not be treating this as the law. The exemption is the law  
9 and not the ESA1.

10 MS. MELL: GEO would directly oppose that. That is  
11 commenting on the evidence. That would be inappropriate and  
12 unfairly weighing and discrediting that exhibit and how they  
13 factor that into their equation.

14 THE COURT: The instructions of the Court are the  
15 law. The word "municipal" is in the instructions. They  
16 don't understand what it means so I should tell them what it  
17 means. The supplemental instruction is an additional  
18 instruction on the law. I don't need to make any other  
19 comment about it.

20 Okay.

21 MS. BRENNEKE: Your Honor, may I be heard for a  
22 moment? It seems like there may also be a misunderstanding  
23 of law underlying this, that the parties all agree, which is  
24 that the Minimum Wage Act exempts facilities operated by all  
25 government agencies, including federal government agencies.

1 We would request an instruction that actually says that it  
2 exempts facilities operated by federal, state and local  
3 governments, and that was already acknowledged by GEO and  
4 included in the arguments, but I don't think the Court has  
5 instructed that is the basic way that constitutional law  
6 works. We could provide you some language that would be a  
7 little more inclusive on that.

8 THE COURT: Of what?

9 MS. BRENNEKE: Something like: The Washington  
10 Minimum Wage Act exempts facilities operated by federal,  
11 state and local governments. Although subsection (k) and  
12 Exhibit A-321 do not specifically reference the federal  
13 government, all parties agree that Washington law does not  
14 apply to federally-operated facilities like a federal prison.  
15 That is the state of the law.

16 MS. MELL: No, Your Honor, that is not something GEO  
17 is going to agree with.

18 THE COURT: They asked for a simple clarification of  
19 a term. That is all I want to give them is a response to  
20 their inquiry. It is a little late to be changing  
21 instructions, unless there was a gross error that I don't  
22 think exists.

23 MS. BRENNEKE: Your Honor, it just seems that perhaps  
24 the parties and the Court all know that the federal  
25 government-operated facilities are not excluded, but I am

1 afraid that perhaps the jury instructions, as they are  
2 submitted, omit that point. In that sense, it could be a  
3 gross error.

4 MS. MELL: Your Honor --

5 THE COURT: We don't know what they don't understand  
6 about that issue. They haven't asked about it. I don't want  
7 to reopen the whole instruction process at this state of the  
8 game.

9 Forward that to whoever gets it, and as soon as we have it  
10 in hand we will get the jury and I will read it.

11 Tyler, she's sending it to you.

12 THE CLERK: If you email it to me in Word version, I  
13 can convert it.

14 THE COURT: Repeat that to her.

15 THE CLERK: Rachel, you can forward me the Word  
16 version of it.

17 LAW CLERK: I am going to send you the entire packet  
18 again, Supplemental Instruction, No. 1, page 28.

19 THE CLERK: Understood. Got it.

20 THE COURT: Tell me when it is in the hands of the  
21 jury.

22 THE CLERK: I can project it to the jury just like I  
23 did with the jury instructions, and in the next few minutes  
24 put it into the Box so they can have a copy of it to keep and  
25 download. Right now, I am ready to show it to the jury as we

1 did with the prior jury instructions.

2 THE COURT: I have an appointment this afternoon to  
3 order new hearing aids. This left one started buzzing loudly  
4 for no apparent reason.

5 Now, Tyler, I guess you can go ahead with that so they can  
6 read it. Let's bring the jury in.

7 THE CLERK: I sent them a quick message telling them  
8 we are bringing them back in. Give me a couple seconds, and  
9 I will bring them back in.

10 They are on their way back in here.

11 (The following occurred in the presence of the jury.)

12 THE COURT: Okay. The jury is present. Ladies and  
13 gentlemen, I have a question from you that you would like the  
14 Court to provide clarifications on the meaning of "municipal"  
15 and whether that is interchangeable with "federal."

16 I am going to give you a supplemental jury instruction.  
17 You should not place any undue emphasis on the fact this  
18 supplemental instruction is being given to you separately.  
19 It should be considered with all the other instructions of  
20 the Court.

21 The instruction is as follows: In the instruction,  
22 "municipal" means city or town. It does not mean "federal."

23 You may retire to continue your deliberations. A copy of  
24 this instruction will be available to you with the other  
25 instructions on the platform. You may be excused to continue



1 your deliberations.

2 (The following occurred outside the presence of the jury.)

3 THE COURT: Okay. We will see what happens next.

4 (Recessed.)

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6  
7 C E R T I F I C A T E

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9  
10 I certify that the foregoing is a correct transcript from  
11 the record of proceedings in the above-entitled matter.  
12  
13  
14

15 */s/ Angela Nicolavo*

16 ANGELA NICOLAVO  
17 COURT REPORTER  
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